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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,177	10/14/2004	George Braoudakis	MID-PT012	1955
3624 7590 07/21/2009 VOLPE AND KOENIG, P.C. UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			EXAMINER DEMEREE, CHRISTOPHER R	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 07/21/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/511,177

Applicant(s)

BRAOUDAKIS, GEORGE

Examiner

CHRISTOPHER DEMEREE

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5, 6, 10, 11, 13, 23, 24, 26, 27, 31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 6, 10, 11, 13, 23, 24, 26, 27, 31 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim 5 is objected to because of the following informalities: Line 1 reads, "A container according to claim 4,...". Examiner notes that claim 4 has been cancelled. In order to examine the claims on the merits, examiner considers claim 5 to depend from claim 1. Appropriate correction is required.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "at least one removable portion [providing] at least one tab... to elevate the assembled container off a surface" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 5, 6, 10, 11, 13, 23, 24, 26, 27, 31 and 32 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for showing a removable portion removable from an outer wall panel, does not reasonably provide enablement for the removable portion providing a tab to support the box in an elevated position relative to the surface on which said box rests. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. Examiner notes that it appears as if the tabs that elevate the box are formed in the inner wall, not the outer wall, and the specification does not clearly make a distinction between the inner and outer wall of the side relative to the tab in question, and where said tab is formed on the blank. Moreover, Examiner notes that each of the figures are drawn to various embodiments of the blank and the constructed pizza box with the removable portions elevating the box off a surface is never shown. The relevance of the

constructed container in Figure 1SB is not clear as it appears to be a picnic basket and not a pizza box.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 5, 6, 10, 13, 23-27 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luberto (US 5725146 A) in view of Yocum (US 6027018 A).

Regarding claims 1, 13 and 23-25, Luberto teaches a container and blank for making including: a main panel (12) having a plurality of substantially straight edges about its periphery (14, 16, 18 and 20), each edge extending angularly from each of two adjoining edges (see Fig. 1); a plurality of side walls (32 and 46) depending from at least half of the edges of said main panel, said edges having side walls (see Fig. 4); a base panel (Luberto; 12) and a cover panel (Luberto; 105) one or more of said side walls having an outer wall panel (41) and an inner wall panel (43), said outer wall panel extending from a proximal fold or score line (14) along a remaining edge and said inner wall panel extending from a distal fold or score line (42) remote from the proximal fold or score line and along an opposed edge of said outer wall panel (see Fig. 4). The combination of the inner and outer side panels form a roll over wall of double thickness. Examiner notes that the top panel defined between lines 92 and 94 (horizontally), and

lines 96 and 132 (vertically) is substantially the same shape as the bottom panel.

Luberto also teaches a container wherein tabs (Luberto; 52 and 54) or the like are provided on the lower surface or edge of the container (Luberto; see Fig. 2). Examiner considers these tabs to be capable of circulating air between the bottom of the container and the surface on which the container rests. Luberto lacks a removable portion from one of said sidewalls.

Yocum teaches a carton with integral promotional material wherein one or more of the walls further include one or more removable outer portions (138) that reveal promotional information on an inner panel (see Figures 1-24). Yocum teaches providing said removable portion(s) on a variety of differing containers and in a variety of locations. Therefore, it would have been obvious to one skilled in the art at the time of applicant's invention to provide the removable portion to any one of a finite number of six locations on Luberto's box that are capable of comprising a removable portion while still maintaining the integrity of the container (i.e. cover lid sides, cover lid front, base sides, or base front wall); and it would have been obvious to one of ordinary skill to select the base side walls. The inclusion of such promotional features on the outer wall panel of Luberto's pizza box would make the box more attractive to the consumer (Yocum; Col 1 lines 25-29).

Regarding claim 5, Luberto, as modified above, teaches a container in which the removable portion (Yocum; 138) or portions are arranged with a perforation line (Yocum; 136) or line of weakness to facilitate removal from the remaining wall portion and inner wall panel and the remaining outer wall portion together with the inner wall

panel, which is left intact after removal of the removable portion (as explained in the rejection of claims 1 and 4 above), retain sufficient structural integrity that the container remains stackable (Luberto; Col 4 lines 5-15) and performing its function in retaining the heat and/or freshness of its contents when enclosed therein.

Regarding claims 6 and 27, Luberto, as modified above, teaches a container wherein the removable portion includes a slit, or cut providing a tab (Yocum; 132) to facilitate easy removal of the coupon from the outer wall panel. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to further modify Luberto's container to include a slit providing a tab on the removable coupon portion so that the removal of said coupon is more easily facilitated as taught by Yocum.

Regarding claims 10 and 31, Luberto, as modified above, teaches a container wherein the sidewalls are at equal angles to each adjoining sidewall (Luberto; Fig. 2 shows side wall meeting at right angles to one another) and the side walls have substantially parallel edges such that the main panels are close to a substantially parallel spaced apart disposition, there being three side walls which together with the joining panel (Luberto; 76) constitute a four-sided carton forming a square or rectangular prism and the side walls and joining panel have dimensions selected for the packaging of pizza style pies (Luberto; Fig. 1), and may include ventilation holes (Luberto; Col 2 lines 25-27), corner reinforcing tabs (Luberto; 68, 70, 80 and 82), simple single-paneled side walls (Luberto; 60) on the main panel not having the roll-over walls and such like as desired.

Regarding claim 26, Luberto, as modified above, teaches a container with double wall thickness (Luberto; inner wall panel 43 and outer wall panel 41) wherein only one panel has a removable section for a consumer coupon (Yocum; 138), leaving an intact inner wall panel and structurally sound box. It would have been obvious to one skilled in the art at the time of applicant's invention to place said removable coupons on the outer side panel rather the inner side panel so that the promotional material would be viewable to the consumer (Yocum; Fig. 21).

7. Claims 11 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luberto in view of Yocum as applied to claims 1 and 23 above, and further in view of Uffmann (US 6153280 A).

Regarding claims 11 and 32, Luberto, as modified above, teaches everything except a removable portion with magnetic material to permit the removable portion to be temporarily attached to a metallic surface. Uffmann, however, teaches a magnetic card with perforations (58) that allow the panel (54) to be attached to a metallic surface via magnet (56). Therefore, it would have been obvious to one skilled in the art at the time of applicant's invention to further modify Luberto's pizza box to include magnetic strips on the removable coupons so that the coupons could be placed on a refrigerator (Uffmann; Col 1 lines 14-17).

Response to Arguments

8. Applicant's arguments filed 5/8/2009 have been fully considered but they are not persuasive. Applicant argues that the prior art fails to teach a tab on a lower surface whose purpose is to elevate the container in order to allow air circulation below the

container. Examiner notes that although Luberto's tabs 52 and 54 are not taught to specifically perform that function that the tabs are *capable* of elevating the box off a surface, which allows air to circulate beneath the bottom wall.

Conclusion

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **CHRISTOPHER DEMEREE** whose telephone number is (571)270-1982. The examiner can normally be reached on Mon-Fri, 8:00 AM-5:00PM, Alt Fri, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Demeree/
Examiner, Art Unit 3782

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782